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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 IN RE: Case No. 09-13181

11 HOSAIN AZIZIAN, and CHAPTER 11  
12 FATEMEH H. AZIZIAN,

13 DEBTORS. /

MOTION TO DETERMINE SECURED STATUS;  
DECLARATION OF FATEMEH AZIZIAN;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

14 Date: December 3, 2010

15 Time: 9:00 a.m.

16 Place: 99 South E St.  
Santa Rosa, CA

17 TO: HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY JUDGE:

18 Fatemeh and Hosain Azizian, Debtors herein, hereby move the above  
19 entitled Court for an Order Determining the Secured Status of the  
20 allowed claim of Citibank Mortgage (6 Via El Verano, Tiburon, CA)  
21 pursuant to Section 506 of the Code and the terms of the Chapter 11  
22 Plan.

23 Said Motion is made on the grounds that the value of the  
24 collateral is less than the allowed claim of the beneficiary secured  
25 by the first priority Deed of Trust and that the claim of Citibank  
26 secured by a second priority Deed of Trust is wholly unsecured. Said  
27 allowed claim of Citibank Mortgage is unsecured.

28 Said Motion is based hereon, on the appended Declaration of

1 Fatemeh Azizian and on the Memorandum of Points and Authorities  
2 appended hereto.

3 Dated: 10/29/10

DAVID N. CHANDLER, p.c.

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By: /s/ David N. Chandler

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DAVID N. CHANDLER,  
Attorney for Debtors

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DECLARATION OF FATEMEH AZIZIAN

9

I, Fatemeh Azizian, declare and say:

10

1. That if called as a witness, I am competent to testify to  
11 the within matters from my own knowledge.

12

2. I am one of the Debtors in the above captioned matter and  
13 have an opinion of value of the subject real property based upon my  
14 ownership thereof.

15

3. The real property located at 6 Via El Verano, Tiburon,  
16 California is real property owned by my husband and me consisting of  
17 a single family residence.

18

4. Said real property had a current market value of in my  
19 opinion as of the commencement of this case of \$1,115,000. Real  
20 property values in Marin County have declined since the commencement  
21 of the case.

22

5. Washington Mutual, now Chase, holds the first priority Deed  
23 of Trust on the subject property. Chase's Proof of Claim states that  
24 it was due the sum of \$1,205,000 as of November 7, 2009. Since that  
25 time arrears have accrued that are provided to be paid over 60 months  
26 in the Plan of approximately \$62,450.00. Taxes were not paid on the  
27 subject property and were in arrears. Said Deed of Trust is recorded  
28 in the official records of County of Marin, Document No. 2006-0035524,

1 on June 6, 2006.

2 6. Based upon such value the collateral located at 6 Via El  
3 Verano, Tiburon, California, the claim of claimant filed as Claim 15-1  
4 on December 18, 2009 is wholly unsecured.

5 Executed under penalty of perjury this 28<sup>th</sup> day of October, 2010  
6 at Tiburon, California.

7 /s/ Fatemeh Azizian  
8 Fatemeh Azizian, Debtor

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10 MEMORANDUM OF POINTS AND AUTHORITIES

11 1. An allowed claim of a creditor secured by a lien on property  
12 in which the estate has an interest is secured to the extent of the  
13 value of such creditor's interest in the estate's interest in such  
14 property. 11 U.S.C. Section 506(a)(1).

15 2. To the extent that a lien secures a claim against the debtor  
16 that is not an allowed secured claim, such lien is void. Section  
17 506(d).

18 3. Section 506(a) bifurcates a debt into secured and unsecured  
19 components. The secured component is the secured debt. In re Glenn,  
20 786 F.2d 1144 (9<sup>th</sup> Cir. 1986).

21 4. The Chapter 11 Plan provides that the claim of Citibank  
22 Mortgage will be determined under Section 506 and paid the value of  
23 the creditor's interest in the Debtors' interest.

24 5. It is respectfully submitted that the value of the  
25 collateral which is collateral for Citibank Mortgage is as set forth  
26 herein and that the claimant's allowable claim is wholly unsecured.

27 6. It is submitted that the collateral be valued as herein  
28 provided, that the claim of Citibank Mortgage be determined to be

1 unsecured, and that the lien of Citibank Mortgage on real property  
2 located at 6 Via El Verano, Tiburon, California be avoided pursuant  
3 to Section 506.

4 Dated: 10/29/10

Respectfully submitted,  
DAVID N. CHANDLER, p.c.

6  
7 By: /s/ David N. Chandler  
DAVID N. CHANDLER,  
Attorney for Debtor